

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : **10/529,778**
Applicant(s) : **EPSTEIN et al.**
Filed : **3/30/2005**
TC/A.U. : **2436**
Confirmation : **2264**
Examiner : **SHIFERAW, Eleni A.**
Atty. Docket : **US020358US**
Title: **VERIFYING A NODE ON A NETWORK**

Pre-Appeal Brief Request for Review

Mail Stop **AF**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the final Office action of 17 February 2010, the applicants request review of the final rejection in the above referenced application. No amendments are being filed with this request. This paper is being filed with a Notice of Appeal.

This review is requested for the reason(s) stated in the following remarks.

Status of Claims

Claims 1-4, 6-7, and 9-12 stand provisionally rejected on the grounds of nonstatutory obviousness-type double patenting over claims of copending application 10/529,353 (hereinafter Rosner) in view of Liao et al. (USP 6,717,916, hereinafter Liao)¹.

Claims 1-21 stand rejected under 35 U.S.C. 103(a) over Lundkvist (USPA 2003/0184431) in view of Fletcher (USP 6,363,477) and Davis (USP 6,088,450).

¹ At page 5 of the final Office action, the Examiner states that the applicants' arguments are persuasive for the double patenting rejection, yet the prior double patenting rejection is included at page 10.

REMARKS

The examiner's omissions of one or more essential elements needed for a prima facie rejection:

The invention addresses determining proximity of a target node to a source node, based on receipt of a response from the target node to a query from the source node.

The Examiner fails to identify where the prior art discloses that the response from the target node includes a measure of processing time required to generate the response, as specifically claimed in each of the applicants' independent claims 1, 9, and 15.

In the provisional double-patenting rejection over Rosner in view of Liao, the Examiner acknowledges that Rosner does not disclose that the response from the target node includes a measure of processing time required to generate the response, and asserts that Liao discloses this feature at column 1, line 61 - column 2, line 62. This assertion is incorrect.

Liao discloses a method and apparatus for dynamically adjusting timing parameters in a wireless data network. A server system receives timing statistics that reflect the performance of the wireless network, and, using the timing statistics and other timing related information such as the type of the wireless networks, the server device determines a new set of timing parameters to be used by itself and the wireless client device or other client devices. The server device then transmits the new timing parameters to the wireless client devices. This process allows the server to dynamically control the timing and performance behaviors of all the mobile devices to an optimal degree with minimal efforts.

The applicants respectfully note that it is the duty of the Examiner to specifically identify each and every element and limitation of a claim in the cited reference as per 37 CFR 1.104(c)(2) and MPEP 707, which explicitly state that “the particular part relied on must be designated” and “the pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.” The Examiner cites the entirety of Liao's 'Summary of the Invention', as well as four figures, and fails to identify which element in Liao is considered to correspond to the claimed response, and which element in Liao is considered to correspond to the claimed measure of time to generate the response that is included in this response.

The applicants respectfully suggest that the reason that the Examiner's cite is vague and non-specific is that Liao does not address determining a time required to respond to a query and including that time in that response to the query. Even assuming in argument that there is some relevance of Liao to the applicants' claimed invention, and the transmission of these timing statistics is considered a response to a query, nowhere in the cited text or figures does Liao teach or suggest including a measure of the time required to produce this response. Merely communicating a timing statistic in a response is not equivalent to, and does not suggest, determining a time required to produce the response and including that time in the response.

Because the combination of Rosner and Liao fails to teach or suggest that the response from the target node includes a measure of processing time required to generate the response, and because the Examiner has failed to specifically identify where this element is found in the cited prior art, the applicants respectfully maintain that the Examiner has failed to establish a prima facie case to support the provisional double-patenting rejection of claims 1-4, 6-7, and 9-12 over Rosner and Liao.

In the rejection of claims 1-21 stand under 35 U.S.C. 103(a) over Lundkvist in view of Fletcher, and Davis², the Examiner acknowledges that Lundkvist does not disclose a response that includes a measure of the time required to generate the response, and asserts that Fletcher discloses this feature at column 18, lines 28-63 and claim 8. This assertion is incorrect.

As in the cite to Liao, the Examiner fails to identify which element in Fletcher is considered to correspond to a measure of the time required to produce a response that is included in the response.

At the cited text, Fletcher teaches determining a processing time required to generate a response to a query, but this determination is performed by the analysis system after the response is received. Obviously, because the time is not determined until after the response has been received, the response could not contain this as-yet-to-be-determined time.

Fletcher teaches that the time to generate the response is measured as "the difference between T3 and T2". As clearly illustrated in Fletcher's FIG. 11, the response data packet includes time-stamps T3 and T4; it does not include T2. Accordingly, this response cannot be said to include a measure of the time required to generate the response, because absent the time-stamp T2, the time required to generate the response cannot be determined.

Fletcher's technique for determining the processing time for generating a response is the conventional technique for determining processing time, and is substantially different from the applicants' claimed invention. As clearly evident in FIG. 11, Fletcher's technique requires correlating the request data packet (which contains T2) and the response data packet (which contains T3) before the measure of processing time to generate the response data packet (T3-T2) can be determined. The applicants' technique eliminates the need to perform this correlation.

² The applicants note that Davis is not referenced in the Examiner's remarks in support of this rejection.

Because Fletcher fails to teach a response that includes a measure of processing time required to generate the response, and because the text cited by the Examiner clearly states that the measure of processing time requires two time-stamps, only one of which is included in the response, and because the Examiner has failed to specifically identify which element in Fletcher is considered to correspond to the measure of processing time included in the response, the applicants respectfully maintain that the Examiner has failed to establish a prima facie case to support the rejection of claims 1-21 under 35 U.S.C. 103(a) over Lundkvist in view of Fletcher and Davis.

Respectfully submitted,

/Robert M. McDermott/
Robert M. McDermott, Esq.
Registration Number 41,508
Phone: 804-493-0707
Fax: 215-243-7525

Please direct all correspondence to:
Philips Intellectual Property and
Standards
P.O. Box 3001
Briarcliff Manor, NY 10510-8001
Phone: (914) 333-9618
Fax: (914) 332-0615